

1 A 417 West Elm.

2 Q And this is the -- is this the same 517 West Elm you

3 claimed as your local residence when you were in Eldon?

4 A Yes.

5 Q Do you jointly own any other property in Eldon?

6 A No, sir.

7 Q Did you and Mark McVey discuss the Eldon

8 applications on January the 18th, 1992?

9 A Yes.

10 Q Who brought up the subject of the applications?

11 A As my memory serves me, he did.

12 Q And where was this convers-- when did -- where did

13 this conversation take place?

14 A In Burlington.

15 JUDGE FRYSIAK: What exhibit are you in?

16 MR. NEELY: I'm not in exhibit at this point, Your

17 Honor. We'll resume cross-examination.

18 MR. WARD: It's discussed in Exhibit 5 --

19 MR. NEELY: But, but the meeting, the meeting is

20 discussed in Exhibit 5.

21 MR. WARD: 4.

22 MR. NEELY: 4, pardon me.

23 BY MR. NEELY:

24 Q You say in Burlington.

25 A Yes.

1 Q Would -- do you have a more specific address than
2 that?

3 A At the, at the radio station.

4 Q And what else was talked about at this -- during
5 this conversation to your recollection?

6 A You mean outside of this conversation of -- in
7 reference to Eldon?

8 Q Well, you, you had a discussion on January the 18th
9 with Mark McVey.

10 A Right.

11 Q And you mentioned in your testimony that you talked
12 about the Eldon applications. What other subject matter or
13 other topics did you discuss apart from the Eldon applications
14 during the conversation?

15 A Oh, we may have discussed the transmitter and why it
16 wasn't operating properly at the time.

17 Q Would that be -- you say the radio station KKMI
18 transmitter?

19 A Yes, sir.

20 Q Anything else to your recollection? Any other
21 topics?

22 A Not that I can recall.

23 Q And what time of day or night was this conversation?

24 A Well, it started at approximately 10:00 that evening
25 and it concluded sometime -- 3:00-3:30 the following morning.

1 Q All right. Now you testified that there was -- you
2 were with Mr. McVey for a certain period of time and then you
3 returned to the Burlington studio I believe and Mr. McVey
4 stayed at the transmitter site and then you later met up with
5 him again, so that you were, you were together twice --

6 A Right.

7 Q -- during that period of time that you just
8 referred to.

9 A Right.

10 Q During, during those two periods, was anyone else
11 present?

12 A During our conversations?

13 Q Yes, sir.

14 A No, but as I stated in the depositions, my brother
15 was there in the other room in there -- in our production room
16 at the time.

17 Q Okay. He was in the building, but not a party to
18 your conversations?

19 A That's right.

20 Q Now, since you were together at both -- two times,
21 isn't it possible that the conversation of -- regarding the
22 Eldon applications took place during both periods?

1 Q So you don't recall if you talked to him about the
2 Eldon applications the first time or the second time?

3 A I, I --

4 MR. WARD: Objection. Could, could you clarify --

5 MR. NEELY: On January, on January 18th you had --

6 MR. WARD: Well, we're talking -- I know we're
7 talking about January 18, but I don't know what you mean by
8 the first time or the second time.

9 JUDGE FRYSIK: Our presence together was
10 interrupted by leaving -- Mr. Brown leaving the studio, or
11 transmitter, to go to the studio. At, at a point later in the
12 evening, Mr. McVey joined Mr. Brown at the studio.

13 MR. WARD: Okay. I, I -- my understanding -- please
14 correct me, but my understanding was that it started in the
15 studio, they went to the transmitter together and then Brown
16 returned to the studio first and later McVey came back to the
17 studio. So there were actually three -- there were three
18 different points at which they were together. Sort of the
19 like the fox and the goose and the bag of grain, but to talk
20 about two -- the first and the second as if those were -- as
21 if there were only two, I think is going to lead to confusion.
22 In fact, it may already have. But am I -- could -- am I
23 correct that there were three --

24 WITNESS: Right. He arrived at the studio, we went
25 to the transmitter and looked at the, at the problem with the

1 transmitter.

2 MR. WARD: You went there together.

3 WITNESS: Right. And then I left to go back to the
4 studio at that point, and then shortly thereafter, I don't
5 know the exact time, to feed tones down the line to set
6 levels. So he remained at the transmitter site and then came
7 back after he concluded that project.

8 MR. WARD: So there were really --

9 MR. NEELY: Your Honor, I object to Mr. Ward taking
10 over the examination.

11 MR. WARD: I don't mean to take over the
12 examination. I just, I just wanted to make sure that we
13 didn't have a totally useless record that, that speaks of only
14 two venue meetings, when in fact there were three.

15 JUDGE FRYSIAK: We're going to try and clarify it,
16 Mr. Ward.

17 MR. WARD: Well, be my guest. I have nothing
18 further to add.

19 JUDGE FRYSIAK: In reference to counselor's
20 question, maybe we can break it up into hourly segments. You
21 were together -- or this episode lasted from 10:00 p.m. to
22 3:30 a.m. Do you recall at which point you had a conversation
23 with Mr. McVey about the substance of which you say in your
24 affidavit?

25 WITNESS: I don't recall the exact time, Your Honor.

1 JUDGE FRYSIAK: Well, it could have been at 11:00,
2 12:00, 1:00, 2:00, or at 3:00. Is that right?

3 WITNESS: It's possible. Yes.

4 JUDGE FRYSIAK: All right. All right, Mr. Neely.

5 MR. NEELY: If I might have about three minutes,
6 Your Honor, just to recollect I may be, I may be done.

7 JUDGE FRYSIAK: All right. Want a recess?

8 MR. NEELY: Yes, please.

9 JUDGE FRYSIAK: All right. Five minute recess.

10 (Whereupon. off the record from 11:36 a.m. to 11:43

1 Q You say, we did some work on it?

2 A Yes. I assisted him.

3 Q What kind of work was done?

4 A Oh, we installed a new furnace, converted the
5 heating system from oil burner to natural gas, and some roof
6 repairs. That type of thing.

7 MR. NEELY: I have no further questions of this
8 witness.

9 JUDGE FRYSIK: All right. Thank you. Any
10 redirect?

11 MR. WARD: No redirect, Your Honor.

12 JUDGE FRYSIK: All right. So, how are we going to
13 get the other exhibits in and --

14 MR. WARD: Well --

15 JUDGE FRYSIK: Let's --

16 MR. WARD: I, I would -- let's take them one-by-one,
17 Your Honor.

18 JUDGE FRYSIK: You don't need this witness?

19 MR. WARD: No, we don't need this witness.

1 MR. WARD: No, I know.

2 JUDGE FRYSIK: I was just wondering whether you
3 were going to do it through this witness --

4 MR. WARD: No, no, I -- your question was right in
5 sync, but Rivertown Exhibit 5 -- proposed Exhibit 5, which was

1 -- the first page of your Exhibit 13, but I, I will do that
2 when we come back after noon. But the, the balance of these

3 [REDACTED]

1 | MR. WARD: Yeah. |

2 | JUDGE ERYSIK: All right. So this ends your direct |

1 but we can work a little longer and --

2 MR. WARD: Well, let's see how far we get today.

3 JUDGE FRYSIK: All right. Be back at 1:00.

4 MR. NEELY: Thank you.

5 (Whereupon, off the record at 11:45 a.m. to
6 reconvene the same day.)

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1 A F T E R N O O N S E S S I O N (1:03 p.m.)
2 JUDGE FRYSIK: On the record. Can I take your
3 oath?
4 Whereupon,
5 CARMELA SUE SAMPLE-DAY

1 -- to Sample Exhibit 7, which is dated July 10 of 1992. And
2 that official notice be also taken of Rivertown's reply to
3 Partial Opposition to Petition to Leave to Amend, which was
4 filed 20 -- July 22, 1992. I'd be happy to, to make copies of
5 -- after today.

6 JUDGE FRYSIAK: I have no trouble taking judicial
7 notice. Our only requirement is that you photocopy them so
8 for --

9 MR. WARD: Yes.

10 JUDGE FRYSIAK: -- for ease in --

11 MR. WARD: But these, these --

12 JUDGE FRYSIAK: However, Exhibit 7 for Sample was
13 offered in the nature of proof. I think this is evidence that
14 you're giving me or it's just argument? I mean, I have no
15 trouble taking judicial notice.

16 MR. WARD: It's mixed --

17 JUDGE FRYSIAK: You might refer in your proposed
18 findings and requesting that I take judicial notice, if it's
19 that --

20 MR. WARD: Well, it's mixed, mixed argument and, and
21 evidence. I mean --

22 JUDGE FRYSIAK: If you were offering it as an
23 exhibit I will hear from the other side.

24 MR. WARD: My, my, my reply, for example, described
25 the chronology of, of the file -- I say, Rivertown's reply to

1 | their op-- partial opposition described the chronology of the,
2 | of the first -- of the petition. Also attached a copy of, of
3 | the -- a redacted copy of the employment agreement between Mr.
4 | Brown and the Galesburg station, which contained the express
5 | agreement by the -- his employer that he could leave on 90
6 | days notice to fulfill his commitments to Eldon. So it's,
7 | it's a mixed evidentiary and argumentative matter. At least,

8 | obviously, this for me, I don't think there's any

1 JUDGE FRYSIAK: All right.
2 MR. WARD: And 11 --
3 JUDGE FRYSIAK: 15.
4 MR. NEELY: 15.
5 MR. WARD: Sorry, 15 will be Rivertown's reply to
6 Partial Opposition to Petition for Leave to Amend filed July
7 22nd.
8 JUDGE FRYSIAK: All right.
9 MR. WARD: And I ask leave to withdraw these and
10 make copies and supply --
11 JUDGE FRYSIAK: -- granted.
12 MR. WARD: And I'd, I'd move their admission on the
13 same basis that Sample's Exhibit 7 --
14 JUDGE FRYSIAK: All right. They're received without
15 objection. All right. Mr. Neely, anything else?
16 (Whereupon, the documents referred to
17 as Rivertown Exhibit Nos. 14 and 15
18 were received into evidence.)
19 MR. NEELY: No preliminary matters.
20 JUDGE FRYSIAK: All right.
21 MR. NEELY: With this --
22 JUDGE FRYSIAK: Well, go ahead with your case -- the
23 witness already.
24 MR. WARD: Your Honor, I, I have now supplied to the
25 reporter the original and duplicates of, of Rivertown's

1 Exhibits 4 through 13 --

2 JUDGE FRYSIAK: All right.

3 MR. WARD: -- which we discussed this morning.

4 JUDGE FRYSIAK: Thank you.

5 MR. WARD: I will be making reference to some of
6 those during my examination of Ms. Sample, Ms. Sample-Day and
7 maybe it would be better if I identify her -- we had those
8 sufficiently identified for the record.

9 JUDGE FRYSIAK: Well, when you have the witness on
10 the stand I think you might, might refer to the exhibit then.

11 MR. WARD: Okay.

12 JUDGE FRYSIAK: All right?

13 MR. WARD: Fine.

14 DIRECT EXAMINATION

15 BY MR. NEELY:

16 Q Ms. Sample, you have before you what's been
17 identified in this proceeding as Sample Exhibits No. 1, No. 2,
18 and No. 4. I refer you to -- your specific attention to
19 Sample Exhibit No. 1. That's -- is that a two-page statement
20 attached to a copy of the Sample Broadcasting Company Limited
21 Partnership agreement and certificate?

22 A Yes, it is.

23 Q And page 2 of Exhibit No. 1, is that your signature?

24 A Yes, it is.

25 Q Would you like to make any changes to this exhibit?

1 A No, I don't, I don't want to.

2 Q All right. I refer your attention to Sample

3 Broadcasting Company Exhibit No. 2. That's a -- an eight-page

4 statement. If you turn to page eight, is that a copy of your

5 signature?

6 A Yes, it is.

7 Q And this statement -- is this statement true and

8 correct?

9 A I read it before. I'm just looking at it briefly

10 again.

11 JUDGE FRYSIAK: There are no corrections you want to

12 make?

13 WITNESS: Not -- no.

14 JUDGE FRYSIAK: All right.

15 WITNESS: No corrections.

16 BY MR. NEELY:

17 Q And I refer your attention to Sample Broadcasting

18 Exhibit No. 4, otherwise known as your standardized --

19 integration statement for Sample Broadcasting Company? That's

20 a, a four-page document with a one-page certification on, on

21 page 5. Is that your signature on page 5?

22 A Yes, it is.

23 Q Is this statement true and correct?

24 A Yes, it is.

25 MR. NEELY: That concludes the direct testimony.

1 It's in written form for Ms. Sample-Day.

2 JUDGE FRYSIAK: All right.

3 MR. NEELY: She's available for cross-examination.

4 JUDGE FRYSIAK: Thank you.

5 CROSS-EXAMINATION

6 BY MR. WARD:

7 Q Ms. Sample-Day, I understand through -- from an
8 amendment to your -- a recent amendment to your application,
9 you are recently married?

10 A That is correct.

11 Q How do you prefer to be addressed?

12 A Carmela's fine.

13 Q Well, I don't want to --

14 A Miss, Ms., Mrs. -- it doesn't make any difference.

15 Q But, I mean, Ms. Sample-Day is your preferred
16 rendition of your --

17 A It's kind of new so I haven't really gotten used to
18 anything in particular.

19 Q Still working on it? Okay. Well, we'll be
20 flexible. You were married in late April?

21 A I was married in April and May, by the state and
22 then by the church.

23 Q Both in Ottumwa?

24 A In Ottumwa. That is correct.

25 JUDGE FRYSIAK: This year, right?

1 WITNESS: That's correct.

2 BY MR. WARD:

3 Q And is your, is your husband a U.S. citizen?

4 A No, he's not.

5 Q What citizenship is he?

6 A He's British.

7 Q Does he reside in Ottumwa?

8 A Yes, he does.

9 Q And is he --

10 JUDGE FRYSIK: I didn't hear that question.

11 BY MR. WARD:

12 Q I said does he, does he reside in Ottumwa?

13 A Yes, he does.

14 Q You're living together at the Washington Street

15 address?

16 A That is correct.

17 Q Is he employed there?

18 A He is not employed in Ottumwa.

19 Q I'm sorry?

20 A He is not employed in Ottumwa. He's employed within

21 the vicinity.

22 Q In the vicinity though?

23 A Um-hum.

24 Q Is he employed by any radio station or, or media?

25 A No, he's not. Not any radio station. No.

1 Q Does he have any media interests?

2 A No, none whatsoever.

3 Q How long has he been in Ottumwa or in the, in that
4 vicinity?

5 A On and off since February.

6 Q February of this year?

7 A That is correct.

8 Q And before that where was he physically located?

9 A London.

10 Q Does he expect to spend the rest of his life in the
11 Ottumwa area? Have you discussed that with him?

12 MR. NEELY: Your Honor, I object to this line of
13 questioning. Mr. Day is not a party to the application.
14 Whether he expects to spend time in Ottumwa or any other
15 community, I'm not sure it's relevant to the cross-examination
16 of this witness on her direct case testimony.

1 JUDGE FRYSIAK: This will get us -- what you're in
2 now is the realm of speculation.

3 MR. WARD: Well, granted --

4 JUDGE FRYSIAK: You can ask questions directly
5 whether things have been set down concretely already, but I
6 don't want any of this is it possible that --

7 MR. WARD: No, I agree with that. I always object
8 to those questions.

9 JUDGE FRYSIAK: Right.

10 MR. WARD: Sometimes I ask them, but I always object
11 to them.

12 BY MR. WARD:

13 Q Have you and he discussed your application -- you
14 and he being your new husband -- you discussed the fact --

15 A I don't think I would call it discuss.

16 Q What would you, what would you call it?

17 A I have talked to him about my application, yes.

18 Q You, you advised him that you are an applicant for
19 this station in Eldon?

20 A Yes indeed.

21 Q And you advised him that you planned to move to
22 Eldon?

23 A Yes, I have.

24 Q And when, when did you advise him of that?

25 A Back in February.

1 Q Is that when you first met?

2 A I had met him before years ago, but he reappeared
3 and that's when we actually met. Yes.

4 Q And what was his reaction to the potential that he
5 might be residing in Eldon.

6 A He has no problem with it.

7 Q No problem.

8 JUDGE FRYSIAK: I didn't hear the response. He
9 what?

10 WITNESS: He has no problem with it.

11 BY MR. WARD:

12 Q And he would propose to move with you to Eldon? Is
13 that your present intention?

14 A Yes. He would.

15 Q Now, turning to your Exhibit 2. You, you start off
16 on the very first page, second line, you say your mother is,
17 is full-blooded Hispanic. Would you -- can you define that
18 for me? What do you, what do you mean by that?

19 A Both her mother and father are, or were, Hispanic.

20 Q Well --

21 A So both from the mother and the father, that's what
22 I understand it is.

23 Q And, and by, by that you mean her mother and father
24 were born in Spain?

25 A Mexico.

1 Q They were born in Mexico.

2 A That is correct.

3 Q Were their, were their antecedents -- were their
4 parents born in Spain?

5 A I really couldn't respond to that question.

6 Q But, but on your mother's side of the family, as far
7 back as you're aware, everybody was born in Mexico, but some
8 -- at some point may have come from Spain or some other
9 Spanish country? Is that -- is that the sense of Hispanic?

10 A That's the sense that I, that I understand it.

11 Q Now you -- on the second page of your statement, you
12 said that you -- in the first full paragraph, you say I first
13 learned about the channel allocation in Eldon by reading an
14 article in a local area newspaper and I'd just like to show
15 you that article and see if that -- does that refresh your
16 recollection about the article?

17 A It refreshes my recollection.

18 Q Is that, is that the article that you're referring
19 to in your testimony?

20 A I believe it is.

21 Q Okay. At the bottom, the last paragraph, there
22 appears to be some lawyer advertising going on here, not by
23 anybody in this room, but, but apparently a lawyer by the name
24 of Sidulsky (phonetic sp.) or something like that, who
25 invites --

1 A Pidulsky (phonetic sp.)?

2 Q -- interested, interested applicants to give him a
3 call. Did you ever call him?

4 A I don't recall, no. I recall --

5 Q I congratulate you. So, so does Mr. Neely. But you
6 did call other -- some other lawyers besides Mr. Neely at some
7 point?

8 A Yes, I did.

9 Q But you hired Mr. Neely?

10 A That is correct.

11 Q But -- what actually did you -- did you call Mr.
12 Neely or Mr. Miller first?

13 A I called the firm. I cannot recall who I spoke with
14 first. I believe -- I can't, I can't say for sure who I spoke
15 with.

16 Q Well, sometime after you saw this article?

17 A Yes, it was. I believe it was.

18 Q Because this, this article was the first you, first
19 you ever knew that a channel was being allocated to Eldon?

20 A I believe it is. Yes.

21 Q That's what you -- you said I first learned about
22 the channel allocation at Eldon by reading an article in a
23 local area newspaper in the summer of '91. That's when you
24 testified. Did you -- leaving aside the, the allocations --
25 were you aware before reading this article that there had been

1 a petition filed proposing an allocation in Eldon?

2 A I can't recall for sure about Eldon.

3 Q Were you aware there were other allocations going on
4 at the same time that were -- in, in the area of, of your
5 current employment. Were there not?

6 A Within the vicinity.

7 Q But was there not an allocation being proposed in
8 Albia, spelled A-L-B-I-A?

9 A I couldn't say for sure in Albia.

10 Q Was there application -- an allocation -- FM
11 allocation being proposed for the town or New Stafford?

12 A I can't recall that one. No.

13 Q Can't recall that? But you recall Eldon. I mean,
14 like Eldon really jumped out at you? Is that --

15 A Yes, it did.

16 Q All right. Do you know where New Stafford is?

17 A No, I don't.

18 Q Do you know where Albia is?

19 A Yes, I do.

20 Q Is that -- how far is that from Ottumwa?

21 A It's about 20 miles west of Ottumwa.

22 Q And Eldon is about the same distance east?

23 A About a little less than 20 miles.

24 Q A little less? But you, you never gave any
25 consideration then to filing an application for the Albia

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